

EXHIBIT A

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

ARK22 DOE,

Plaintiff,

v.

ARCHDIOCESE OF NEW YORK;
and DOES 1-5 whose identities are
unknown to Plaintiff,

Defendants.

Index No. _____

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

PLEASE TAKE NOTICE THAT YOU ARE HEREBY SUMMONED to answer the Complaint, a copy of which is hereby served upon you, and to serve a copy of your Answer to the Complaint upon the undersigned attorneys listed below within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in the case of your failure to appear or answer, judgment by default will be taken against you for the relief demanded herein.

Dated: August 14, 2019
New York, New York

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SUPREME COURT OF THE STATE OF NEW YORK
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**COMPLAINT
AND DEMAND
FOR JURY TRIAL**

From approximately the years of 1954 through 1955, Father Vincent Downey ("Fr. Downey") sexually abused Plaintiff as a child. While the abuse occurred, Defendant was generally negligent, it negligently employed Fr. Downey, and it gave him access to children, including Plaintiff. This lawsuit arises out of Plaintiff's significant damages from that sexual abuse, described below. Plaintiff, by and through Plaintiff's attorneys, states and alleges as follows:

PARTIES

A. Plaintiff

1. At all times material to this Complaint, Plaintiff was a patient at Misericordia Hospital ("Hospital") in New York, New York. At all times material, Plaintiff resided in the State of New York.

2. Plaintiff brings this action under a pseudonym with leave of Court.

B. Defendant

3. Whenever reference is made to Defendant, such reference includes that

entity, its parent companies, subsidiaries, affiliates, predecessors, and successors. In addition, whenever reference is made to any act, deed, or transaction of any entity, the allegation means that the entity engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the entity's business or affairs.

4. At all times material, Defendant Archdiocese of New York ("Archdiocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business and conducting business in the State of New York with its principal place of business at 1011 First Avenue, New York, NY 10022.

5. The Archdiocese was created in approximately 1850. Later, the Archdiocese created a corporation called the New York Archdiocese to conduct some of its affairs. The Archdiocese operates its affairs as both a corporate entity and as the organization known as the Archdiocese of New York. Both of these entities and all other affiliated corporations and entities controlled by the Archbishop are included in this Complaint as the "Archdiocese." The Archdiocese functions as a business by engaging in numerous revenue producing activities and soliciting money from its members in exchange for its services.

6. The Archdiocese has several programs that seek out the participation of children including, but not limited to, schools and other educational programs. The Archdiocese, through its officials, has complete control over those activities and

programs involving children. The Archdiocese has the power to appoint, train, supervise, monitor, remove, and terminate each and every person working with children within the Archdiocese.

7. Defendants Does 1 through 5 are unknown agents whose identities will be provided when they become known pursuant to C.P.L.R. § 1024.

JURISDICTION

8. This Court has jurisdiction pursuant to C.P.L.R. § 301 as Defendant's principal places of business are in New York and because the unlawful conduct complained of herein occurred in New York.

9. Venue is proper pursuant to C.P.L.R. § 503 in that New York County is the principal place of business of Defendant Archdiocese. In addition, many of the events giving rise to this action occurred in New York County.

FACTUAL ALLEGATIONS

A. Background

10. The hierarchy of the Roman Catholic Church and, by implication this Defendant, has been aware of the serious problem of clergy sexual abuse of children since at least the 1800s.

11. Further, Roman Catholic Church officials, including this Defendant, have used their power and influence to prevent victims and their families from disclosing allegations of abuse.

12. Additionally, Plaintiff's relationship to Defendant and Fr. Downey, as a vulnerable child and patient at Misericordia Hospital was one in which Plaintiff was

subject to the ongoing influence of Defendant and Fr. Downey, Plaintiff's abuser.

13. At all times material, the Hospital was under the direct authority, control, and province of Defendant Archdiocese and the Archbishop of Defendant Archdiocese. At all times material, Hospital was under the direct authority, control, and province of Defendant Archdiocese and the Archbishop of Defendant Archdiocese. At all times material, Defendant Archdiocese owned, operated, managed, maintained, and controlled the Hospital.

B. Specific Allegations

14. At all times material, Fr. Downey was a Roman Catholic cleric employed by Defendant Archdiocese and Hospital. Fr. Downey remained under the direct supervision, employ, and control of Defendant.

15. Defendant placed Fr. Downey in positions where he had access to and worked with children as an integral part of his work.

16. Plaintiff was treated at Hospital in New York, in the Archdiocese. Plaintiff and Plaintiff's family came in contact with Fr. Downey as an agent and representative of Defendant, and at Misericordia Hospital.

17. Plaintiff developed great admiration, trust, reverence, and respect for the Roman Catholic Church, including Defendant and its agents, including Fr. Downey. Plaintiff, as a minor, vulnerable child and patient, was dependent on Defendant and Fr. Downey. Defendant had custody of Plaintiff and accepted the entrustment of Plaintiff and, therefore, had responsibility for Plaintiff and authority over Plaintiff.

18. From approximately 1954 to 1955, when Plaintiff was approximately 6 to 7

years old, Fr. Downey engaged in unpermitted sexual contact with Plaintiff.

COUNT I: NEGLIGENCE

19. Plaintiff realleges paragraphs 1-18 above.

20. Defendant owed Plaintiff a duty of reasonable care to protect the Plaintiff from injury.

21. Defendant owed Plaintiff a duty of care because Defendant had a special relationship with Plaintiff.

22. Defendant also had a duty arising from the special relationship that existed with Plaintiff, Plaintiff's parents, and other parents of young, innocent, vulnerable children in the Archdiocese of New York to properly train and supervise its clerics. This special relationship arose because of the high degree of vulnerability of the children entrusted to its care. As a result of this high degree of vulnerability and risk of sexual abuse inherent in such a special relationship, Defendant had a duty to establish measures of protection not necessary for persons who are older and better able to safeguard themselves.

23. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant also had a special relationship with Fr. Downey.

24. Defendant owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents, including Fr. Downey, out as safe to work with children; encouraged parents

and children to spend time with its agents; and/or encouraged its agents, including Fr. Downey, to spend time with, interact with, and recruit children.

25. By accepting custody of the minor Plaintiff, Defendant established an *in loco parentis* relationship with Plaintiff and in so doing, owed Plaintiff a duty to protect Plaintiff from injury. Further, Defendant entered into a fiduciary relationship with Plaintiff by undertaking the custody, supervision of, and/or care of the minor Plaintiff. As a result of Plaintiff being a minor, and by Defendant undertaking the care and guidance of the Plaintiff, Defendant also held a position of empowerment over Plaintiff. Further, Defendant, by holding themselves out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment. Defendant, through its employees, exploited this power over Plaintiff and, thereby, put the minor Plaintiff at risk for sexual abuse.

26. By establishing and/or operating the Archdiocese and Hospital, accepting the minor Plaintiff as a participant in its programs, holding its facilities and programs out to be a safe environment for Plaintiff, accepting custody of the minor Plaintiff *in loco parentis*, and by establishing a fiduciary relationship with Plaintiff, Defendant entered into an express and/or implied duty to properly supervise Plaintiff and provide a reasonably safe environment for children, who participated in its programs. Defendant owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from foreseeable dangers. Defendant had the duty to exercise the same degree of care over young patients under its control as a reasonably prudent person would have exercised under similar circumstances.

27. By establishing and operating the Archdiocese and Hospital, which offered educational programs to children and which may have included a school, and by accepting the enrollment and participation of the minor Plaintiff as a participant in those educational programs, Defendant owed Plaintiff a duty to properly supervise Plaintiff to prevent harm from generally foreseeable dangers.

28. Defendant owed Plaintiff a duty to protect Plaintiff from harm because Defendant invited Plaintiff onto its property and Fr. Downey posed a dangerous condition on Defendant's property.

29. Defendant breached its duties to Plaintiff. Defendant failed to use ordinary care in determining whether its facilities were safe and/or determining whether it had sufficient information to represent its facilities as safe. Defendant's breach of its duties include, but are not limited to: failure to protect Plaintiff from a known danger, failure to have sufficient policies and procedures in place to prevent child sex abuse, failure to properly implement policies and procedures to prevent child sex abuse, failure to take reasonable measures to ensure that policies and procedures to prevent child sex abuse were working, failure to adequately inform families and children of the risks of child sex abuse, failure to investigate risks of child molestation, failure to properly train the employees at institutions and programs within Defendant's geographical confines, failure to train the parishioners within Defendant's geographical confines about the dangers of sexual abuse by clergy, failure to have any outside agency test its safety procedures, failure to protect the children in its programs from child sex abuse, failure to adhere to the applicable standard of care for child safety, failure to investigate the amount

and type of information necessary to represent the institutions, programs, leaders and people as safe, failure to train its employees properly to identify signs of child molestation by fellow employees, failure by relying upon mental health professionals, and/or failure by relying on people who claimed that they could treat child molesters.

30. Defendant also breached its duty to Plaintiff by failing to warn Plaintiff and Plaintiff's family of the risk that Fr. Downey posed and the risks of child sexual abuse in Catholic institutions. Defendant also failed to warn them about any of the knowledge that Defendant had about child sexual abuse.

31. Defendant additionally violated a legal duty by failing to report known and/or suspected abuse of children by Fr. Downey and/or its other agents to the police and law enforcement.

32. Prior to the sexual abuse of Plaintiff, Defendant learned or should have learned that Fr. Downey was not fit to work with children. Defendant, by and through its agents, servants and/or employees, became aware, or should have become aware of Fr. Downey's propensity to commit sexual abuse and of the risk to Plaintiff's safety. At the very least, Defendant knew or should have known that it did not have sufficient information about whether or not its leaders and people working at Hospital and other Catholic institutions within the Archdiocese of New York were safe.

33. Defendant knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Archdiocese. At the very least, Defendant knew or should have known that it did not have sufficient information about whether or not there was a risk of child sex abuse for

children participating in Catholic programs and activities within the Archdiocese.

34. Defendant knew or should have known that Defendant had numerous agents who had sexually molested children. Defendant knew or should have known that child molesters have a high rate of recidivism. Defendant knew or should have known that there was a specific danger of child sex abuse for children participating in its youth programs.

35. However, despite this knowledge, Defendant negligently deemed that Fr. Downey was fit to work with children; and/or that any previous suitability problems Fr. Downey had were fixed and cured; and/or that Fr. Downey would not sexually molest children; and/or that Fr. Downey would not injure children.

36. Defendant's actions created a foreseeable risk of harm to Plaintiff. As a vulnerable child being treated at Hospital, Plaintiff was a foreseeable victim. Additionally, as a vulnerable child who Fr. Downey had access to through Defendant's facilities and programs, Plaintiff was a foreseeable victim.

37. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant.

COUNT II: NEGLIGENT TRAINING AND SUPERVISION OF EMPLOYEES

38. Plaintiff realleges paragraphs 1-37 above.

39. At all times material, Fr. Downey was employed by Defendant and was under Defendant's direct supervision, employ, and control when he committed the

wrongful acts alleged herein. Fr. Downey engaged in the wrongful conduct while acting in the course and scope of his employment with Defendant and/or accomplished the sexual abuse by virtue of his job-created authority.

40. Defendant had a duty, arising from its employment of Fr. Downey, to ensure that he did not sexually molest children.

41. Further, Defendant owed a duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent, and address inappropriate behavior and conduct between clerics and children.

42. Defendant was negligent in the training, supervision, and instruction of its employees. Defendant failed to timely and properly educate, train, supervise, and/or monitor its agents or employees with regard to policies and procedures that should be followed when sexual abuse of a child is suspected or observed. Defendant was additionally negligent in failing to supervise, monitor, chaperone, and/or investigate Fr. Downey and/or in failing to create, institute, and/or enforce rules, policies, procedures, and/or regulations to prevent Fr. Downey's sexual abuse of Plaintiff. In failing to properly supervise Fr. Downey, and in failing to establish such training procedures for employees and administrators, Defendant failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

43. As a direct result of the foregoing, Plaintiff sustained physical, emotional, and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of

Defendant in the training and/or supervising of its employees.

COUNT III: NEGLIGENT RETENTION OF EMPLOYEES

44. Plaintiff realleges paragraphs 1-43 above.

45. At all times material, Fr. Downey was employed by Defendant and was under each Defendant's direct supervision, employ, and control when he committed the wrongful acts alleged herein.

46. Defendant negligently retained Fr. Downey with knowledge of Fr. Downey's propensity for the type of behavior which resulted in Plaintiff's injuries in this action. Defendant failed to investigate Fr. Downey's past and/or current history of sexual abuse and, through the exercise of reasonable diligence, should have known of Fr. Downey's propensity for child sexual abuse. Defendant should have made an appropriate investigation of Fr. Downey and failed to do so. An appropriate investigation would have revealed the unsuitability of Fr. Downey for continued employment and it was unreasonable for Defendant to retain Fr. Downey in light of the information it knew or should have known.

47. Defendant negligently retained Fr. Downey in a position where he had access to children and could foreseeably cause harm which Plaintiff would not have been subjected to had Defendant taken reasonable care.

48. In failing to timely remove Fr. Downey from working with children or terminate the employment of Fr. Downey, Defendant failed to exercise the degree of care that a reasonably prudent person would have exercised under similar circumstances.

49. As a direct result of the foregoing, Plaintiff sustained physical, emotional,

and psychological injuries, along with pain and suffering. The sexual abuse and resulting injuries to Plaintiff were caused solely and wholly by reason of the negligent failures of Defendant in the retention of its employees.

PRAYER FOR RELIEF

WHEREFORE, based on the foregoing causes of action, Plaintiff prays for judgment against Defendant in an amount that will fully and fairly compensate Plaintiff for Plaintiff's injuries and damages and for any other relief the Court deems appropriate. The amount of damages sought in this Complaint exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

JURY DEMAND

Plaintiff demands a trial by jury of all issues so triable. Pursuant to §4 of the New York Child Victims Act, Plaintiff is entitled to a trial preference.

Dated: August 14, 2019
New York, New York

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